

Landon Stevens
Flathead County Planning and Zoning
40 – 11th Street West
Kalispell, MT 59901



1885 N. Belmar Dr
Kalispell, MT 59901
17 December 2021

Dear Mr. Stevens,

I am writing because I am concerned about the negative impacts that will result from the North Fork zoning variance application by Cesar and Alexandra Avila, 881 Trail Creek Road, if their variances are permitted. I am a neighbor of the Avilas and for the past 40 years I have spent part of every year at my residence at 800 Trail Creek Road, approximately 1 mile east of the Avila parcel. My concerns are as follows:

- A) Zoning restrictions were on the property when they bought the 2.3 ac parcel and they were aware of them at the time. The Avilas didn't consider the zoning restrictions to be a hardship in 2013 when they bought the property. They originally were using it as an occasional personal vacation cabin, but for the past 2 years its primary use has been as an airBnB rental property. Giving permission for this variance on such a small parcel with a year-round creek on it (Ketchikan Creek) sets a damaging precedence that is contrary to setback regulations and additional cabin restrictions of the North Fork zoning objectives.
- B) This property has been listed for sale for 3 months and that, in my mind, challenges the owners' sincerity of intent to build a second guest cabin for their personal use.
- C) Reducing the current setback from pristine Ketchikan creek from 150' to 30' is ecologically unsound and goes against current zoning regulations; similar reductions of setbacks to only 30' from Trail Creek Road and neighbors' property lines sets a precedent for undesirable outcomes.
- D) The present outhouse is adequate to meet the current sanitary restrictions on this parcel for only one single family dwelling. A county approved septic system, would be required if the variances were approved for a second cabin structure. Given the very small 2.3 ac size of the lot, it would be difficult to locate a suitable septic system that would not negatively impact Ketchikan Creek and be located at standard of at least 150' from the creek.
- E) As a neighbor who has heard gunfire and has seen blazing firepits that are not properly attended by the Avilas renters, I am worried about potential fire hazard which is a very real concern to us neighbors.

The objectives of the zoning regulations were to conserve, preserve, and protect the North Fork's remote and wild character. The unwarranted variances requested by Avilas destroy the very premise of the zoning regulations. Please maintain the standards of the present zoning regulations and deny the Avilas' variance request.

Thank you for your consideration.

Sincerely,
Diane Boyd

Landon Stevens

From: cherylcraane@comcast.net
Sent: Friday, December 17, 2021 4:55 PM
To: Landon Stevens
Cc: kenyonnorthfork@gmail.com
Subject: FZV-21-08 Avila Zoning Variance Request

DEC 24 2021

Good afternoon Landon,

We are writing in response to the zoning variance request submitted by Alex and Cesar Avila, as referenced in the subject line of this email. We own a neighboring property at 880 Trail Creek Road, directly across the road from the subject property. We are full time residents and have owned property on Trail Creek since 1985.

The Avila property was purchased individually by Alex Avila in 2013. Then and now, she lived in eastern Montana and visited infrequently. The property currently has one cabin and an outhouse on site. The existing cabin does not meet current zoning rules, but it was grandfathered in, which was reasonable.

In 2019, The Avila's began renting the cabin as a nightly vacation rental, therefore a business. This has been a successful venture with the cabin being occupied by different tenants, nearly every night throughout the rental season. The Avila's seem to visit only a couple of times each year, typically before and after the rental season. Because of the proximity of our home to their cabin, we unfortunately see and hear, all comings and goings on that property.

While we are unhappy with the property being a rental and the numerous issues (trespassing, noise, theft) that has created, we do understand that is not what is under review at this time. However, it does play into the variance request for reasons we will describe.

It is pertinent to note that the property is currently for sale and marketed as a business. The real estate listing also advertises room to build another cabin and / or garage – even though a variance has not been approved.

The applicants are requesting a "hardship" variance seemingly for personal use, even though the property is currently for sale. Page one of the application, shows technical / professional assistance in preparing the application was provided by their Realtor, Shawnee Barge with Century 21 in Whitefish, who listed the property for sale on 10/03/21. On 10/15/21, the property went under contract with a buyer. On 10/27/21 the buyer rescinded the purchase and the property went back on the market. Please note that the Avila variance application was signed by the applicants 11/10/21 while the property was on the market. The first failed sale appears to be the motivation for submitting the application. Additionally, the Avila's are reportedly under contract to purchase a North Fork property on Moose Creek, subject to the successful sale and closing of their property on Trail Creek. This is important as it negates their hardship claim of a need to add additional living space on the property for themselves as they request in paragraph 11 A of their application.

Other statements in their application do not appear to pertain:

In section 11 on page 2 of the application, the applicants state that they are unaware of similarly situated properties in the North Fork, when actually there are multiple locations with lots smaller than the Avila property. Some of those can be found on Kintla Ranch Road, Deep Woods Trail and Paradise Ridge Trail – just to name a few. They respond affirmatively that they are being deprived of rights enjoyed by other "similarly situated" properties in the same district and that they had no control over the hardship. Larger properties are not similarly situated and should not be compared. Saying they had no control is not accurate either. Alex Avila chose to purchase this property knowing full well what the restrictions were at the time of purchase. She discussed this with us when we became neighbors in 2013 and stated that she was simply happy to have her "little piece of the North Fork" just as it was.

The price Alex Avila paid for the property was very low – approximately \$80k. The price was reflective of the lot size, lack of privacy and the use / zoning restrictions in place. She is now trying to sell it without the restrictions in place (that she was well aware of) at the time she purchased.

In section 11E of the application the applicants state that the hardship is not for economic reasons when it clearly is. Once again, the property has been for sale since 10/3/21 and has had two failed sales. It is listed at \$330k vs. the approximate \$80k paid by the applicant when she purchased it eight years ago.

Potential buyers are not seeing the value so the applicants are trying to get the variance approved to appeal to buyers and support their statement in the listing that additional structures may be built on site. The applicants are selling the property, this variance will apply to a future owner, so how can it be a non-financial hardship for the current owner?

The application also states there was previously a barn on the property. Per the original owner, the structure that was there, was a large log shed that was taken apart about 1940 – 80 years ago. The logs from that demolition were used to put an addition on the existing cabin, which was basically just an enclosed sleeping porch at the time. This should not factor into an approval of the variance.

Granting of this variance would be a special privilege and would be detrimental to protecting the natural resources of the North Fork, and the privacy and quiet enjoyment of the neighboring property owners. The size, proximity to the road and creek, lack of potable water and proper sewage disposal should negate this request. There would be multiple levels of exceptions to approve for a new build on this site.

We built our home in a specific location on our property that would provide privacy and would not face the existing cabin on the Avila property – which is right at the road. The proposed location of the second cabin is within direct view of our home. It simply isn't right to grant a variance for financial gain to one owner to the detriment of North Fork natural resources and other neighbors when the owner requesting the variance knew the zoning regulations at the time of her purchase.

Larry and Cheryl Crane
880 Trail Creek Road
Polebridge, 59928

DEC 20 2021

Landon Stevens

From: cherylcane@comcast.net
Sent: Sunday, December 19, 2021 2:17 PM
To: Landon Stevens; Planning.Zoning; Kristal Kiel; Erik Mack
Subject: FZV-21-08 Avila Zoning Variance

DEC 20 2021

Importance: High

We are forwarding the emails below, and adding comment for your records, as we've been made aware that you've already approved the Avila variance without fact checking the applicant's responses.

It is now understood that you have a process in place to automatically approve this type of variance request, based solely on information provided by the applicant. This property is for sale and has been run as a business for the past three years - this is not a hardship situation for the owner. This is clearly for financial gain. The applicants were dishonest in their responses. They didn't even make application for the variance until after their property was listed for sale - as a rental business. They are simply looking to increase the value in hopes of attracting a buyer at what they've set as a very high price - \$330k for 2.36 acres.

As various neighbors on Trail Creek Road are just now learning of this situation, ten separate property owners are vehemently opposed. We know the final decision has been made but want you to be aware that you were duped by the applicants via their false responses on their application. Their current "for sale" listing and the fact that they are selling as a business are matters of record. Had neighboring property owners been given a voice, you would have had the ability to verify the responses on the Avila Variance Application. Hopefully Environmental Health will properly evaluate the impact of a second dwelling, right on Ketchikan Creek, on this small property.

Cheryl & Larry Crane
880 Trail Creek Road
Polebridge, 59928

From: cherylcane@comcast.net <cherylcane@comcast.net>
Sent: Sunday, December 19, 2021 12:05 PM
To: 'kenyonnorthfork@gmail.com' <kenyonnorthfork@gmail.com>; 'kenna@ecometrixsolutions.com' <kenna@ecometrixsolutions.com>
Cc: 'msalvaggio@ardain.com' <msalvaggio@ardain.com>; 'Merry R. O'Hare' <merryohare.7@gmail.com>; 'larrycane@comcast.net' <larrycane@comcast.net>; 'Don Burgard' <burgie@hughes.net>; 'Becky Braunig' <beckybraunig@gmail.com>; 'Christine Weldon Hughes' <cweldon_@msn.com>; 'Diane Boyd' <dianekboyd@gmail.com>; 'suelwilson4@icloud.com' <suelwilson4@icloud.com>; 'gemoris@hotmail.com' <gemoris@hotmail.com>
Subject: FW: NFLUAC Meeting Cancellation
Importance: High

Randy,

Larry forwarded your email to me. It appears that several of the Trail Creek property owners who were in opposition (including me) were not copied on your email regarding the decision.

I am copying all on this email and sending to you so you and your committee have record of those who were opposed, but had no voice in the matter. Dennis Moris is also opposed but doesn't have email. The Moris included in the cc line is Gary Moris. Denis and Gary own separate properties on Trail Creek Road.

Also for the record, the county received the variance request 11/15/21 and didn't even send out official notice until 12/15/21 - after they'd given it their "rubber stamp" approval.

The county zoning department was clearly duped by the applicant as to the situation being a hardship and not for financial gain. The property is run as a business, is currently for sale (with two rescinded offers) and the variance is solely to increase value and desirability for the future owner. Absolutely not a hardship and absolutely for financial gain.

Cheryl Crane
880 Trail Creek Road
Polebridge, 59928

From: larrycrane@comcast.net <larrycrane@comcast.net>
Sent: Sunday, December 19, 2021 11:44 AM
To: cherylcraane@comcast.net
Subject: FW: NFLUAC Meeting Cancellation

DEC 20 2021

From: Randy Kenyon <kenyonnorthfork@gmail.com>
Sent: Sunday, December 19, 2021 10:30 AM
To: swilson4@wildblue.net; Merry O'Hare <merryohare.7@gmail.com>; Lynn and Bonny Ogle <lpogle@lazys-o.com>; Don Burgard <burgie-sub@hughes.net>; Diane Boyd <dianekboyd@gmail.com>; Larry Crane <larrycrane@comcast.net>
Subject: NFLUAC Meeting Cancellation

There has been a recent significant turn of events in the Avila zoning variance matter. It appears now our zoning language makes this variance a done deal. This is confirmed by the planning office email below. This, along with a variety of other logistical considerations, has placed the NFLUAC in an awkward position. This has led to the difficult decision of canceling the upcoming meeting scheduled for this coming Wednesday the 22nd. We do feel it remains important to express your concerns to the planning staff and Board of Adjustment. This outcome underscores the need to complete the text amendment revision. These efforts proceed on and we can assure all landowners that their participation in this endeavor is essential. We look forward to your continued support.

Could you assist us by informing your neighbors?

Randy Kenyon

Chair, NFLUAC

NF Neighborhood Plan and Zoning 3.40.04

3. Any existing lot or tract which cannot meet these setbacks because of size or topographic limitations will be given a variance.

I spoke with Erik, the director, and he did confirm that this particular variance, it did meet the criteria for approval as stated in The Zoning Regulations, Section 3.40.03 (as you had referenced earlier) and will be granted. The review of the LUAC is just a formality and will go forward.

DEC 20 2021